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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,557	09/21/2001	Albert F. Elcock	GIC-649	5897

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Lipsitz & McAllister, LLC
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MONROE, CT 06468

EXAMINER

KENDALL, CHUCK O

ART UNIT	PAPER NUMBER
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2192

DATE MAILED: 04/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/960,557

Applicant(s)

ELCOCK ET AL.

Examiner

Chuck Kendall

Art Unit

2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the application filed 11/04/2004
2. Claims 1 - 20 are pending.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 - 20 are rejected under 35 U.S.C. 103(a) as being anticipated by Metz et al. USPN 5,666,293 in view of Nobakht et al. USPN 6,745,223.

Regarding claim 1, Metz discloses a software-code configurable digital appliance (39: 45 – 40:48, see device) and a method (41: 51 – 46:26) for operating in a network, comprising:

- (a) selecting an appropriate version of said at least one of firmware and application program code depending on predetermined criteria relating to said network (5:35 – 45, see operating systems and versions, for firmware), and
- (b) loading the selected version into an operating component of said appliance to enable the appliance to operate in said network (5: 60 – 65, see downloading).

Although, Metz doesn't explicitly disclose an end-user digital appliance component for storing different versions of at least one of firmware and application program code. Metz does teach that the modules run compatible versions of software and one or more module versions could be required (33:50 – 55, 60 – 65, and 34:6 – 10). Nobakht in a similar configuration teaches a set top terminal which includes a Asset manager flash 222, that permanently stores one or more applications software

versions that are used to automatically upgrade the operating system and application software associated with it (7:50 – 55). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Metz and Nobakht because, storing different versions of software enables upgrading the system automatically.

Regarding claim 2, a digital appliance in accordance with claim 1, further comprising rudimentary program code in non-volatile memory that permits initialization of said processing component (8:9 – 16, see non-volatile RAM).

Regarding claim 3 digital appliance in accordance with claim 1, further comprising a user interface operatively associated with said processing component for enabling a user to facilitate the selection of said appropriate version (8:24).

Regarding claim 4, a digital appliance in accordance with claim 1, comprising a television settop box (FIGURE 1, 100).

Regarding claim 5, a digital appliance in accordance with claim 4 wherein said network comprises a subscription television system (7:28 – 30, see requested by subscriber).

Regarding claim 6, a digital appliance in accordance with claim 5 wherein said processing component selects said appropriate version in response to the particular subscription television system to which said appliance is connected (5: 35 – 40).

Regarding claim 7, a digital appliance in accordance with claim 6 wherein said different versions are stored in said storage component during manufacture of the Appliance (FIGURE 1, see 12, software server).

Regarding claim 8, a digital appliance in accordance with claim 7 wherein said different versions are adapted to enable said settop to be deployed in any of a plurality of incompatible subscription television systems(5:33 – 35, different types of set-top terminals and see plurality of operating systems (*versions*)).

Regarding claim 9, a digital appliance in accordance with claim 1, wherein at least one of said versions comprises code to enable at least rudimentary communication between said operating component and said network (10: 30 – 35, see packets carrying information).

Regarding claim 10, which is the method version of claim 1, see rationale as previously discussed above.

Regarding claim 11, which is the method version of claim 7, see rationale as previously discussed above.

Regarding claim 12, which is the method version of claim 2, see rationale as previously discussed above.

Regarding claim 13, which is the method version of claim 3, see rationale as previously discussed above.

Regarding claim 14, which is the method version of claim 6, see rationale as previously discussed above.

Regarding claim 15, which is the method version of claim 8, see rationale as previously discussed above.

Regarding claim 16, which is the method version of claim 8, see rationale as previously discussed above.

Regarding claim 17, a method for configuring a digital appliance in accordance with claim 16, wherein said appropriate version is selected in response to the particular network to which said appliance is connected (9:38 – 45).

Regarding claim 18, a method for configuring a digital appliance in accordance with claim 10, wherein said operating component uses rudimentary default code if said network is not supported by the versions stored in said memory (36: 37 – 41).

Regarding claim 19, which is the method version of claim 9, see rationale as previously discussed above.

Regarding claim 20, a method for configuring a digital appliance in accordance with claim 19, comprising the further step of using said rudimentary communication to provide additional code to said operating component from said network, said additional code providing at least one of (i) more sophisticated communication and (ii) additional functionality for said appliance (5:58, see operating system upgrade for additional functionality for said appliance).

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

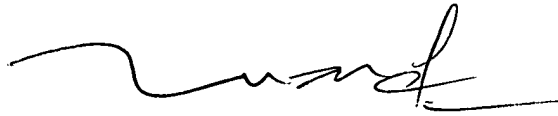
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuck Kendall whose telephone number is 571-272-3698. The examiner can normally be reached on 10:00 am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on 571-272-3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2192

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Tuan Dam', with a stylized flourish at the end.

CK.

TUAN DAM
SUPERVISORY PATENT EXAMINER